

§9701.512

(2)(i) Appropriate arrangements for employees adversely affected by the exercise of any authority under paragraph (a)(1) or (2) of this section, provided that the effects of such exercise have a significant and substantial impact on the bargaining unit, or on those employees in that part of the bargaining unit affected by the action or event, and are expected to exceed or have exceeded 60 days. Appropriate arrangements within the duty to bargain include proposals on matters such as—

(A) Personal hardships and safety measures; and

(B) Reimbursement of out-of-pocket expenses incurred by employees as the direct result of the exercise of authorities under this section, to the extent such reimbursement is in accordance with applicable law and governing regulations.

(ii) Appropriate arrangements within the duty to bargain do not include proposals on matters such as—

(A) The routine assignment to specific duties, shifts, or work on a regular or overtime basis; and

(B) Compensation for expenses not actually incurred, or pay or credit for work not actually performed.

(f) Nothing in this section will delay or prevent the Department from exercising its authority. Any agreements reached with respect to paragraph (e)(2) of this section will not be prece-dential or binding on subsequent acts, or retroactively applied, except at the Department's sole, exclusive, and unreviewable discretion.

§9701.512 Conferring on procedures for the exercise of management rights.

(a) As provided by §9701.511(c), management, at the level of recognition, will confer with an appropriate exclusive representative to consider its views and recommendations with regard to procedures that management will observe in exercising its rights under §9701.511(a)(1) and (2). This process is not subject to the requirements established by §§9701.517(a)(5) (regarding enforcement of the duty to consult or negotiate), 9701.518 (regarding the duty to bargain and consult), and 9701.519 (regarding impasse procedures). Nothing in this section requires that

5 CFR Ch. XCVII (1–1–10 Edition)

the parties reach agreement on any covered matter. The parties may, upon mutual agreement, provide for the Federal Mediation and Conciliation Service or another third party to assist in this process. Neither the HSLRB nor the Authority may intervene in this process.

(b) The parties will meet at reasonable times and places but for no longer than 30 days, including any voluntary third party assistance, unless the parties mutually agree to extend this period.

(c) Nothing in the process established under this section will delay the exercise of a management right under §9701.511(a)(1) and (2).

(d) Management retains the sole, exclusive, and unreviewable discretion to determine the procedures that it will observe in exercising the authorities set forth in §9701.511(a)(1) and (2) and to deviate from such procedures, as necessary.

§9701.513 Exclusive recognition of labor organizations.

The Department must accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit as determined by the Authority, who cast valid ballots in the election.

§9701.514 Determination of appropriate units for labor organization representation.

(a) The Authority will determine the appropriateness of any unit. The Authority must determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this subpart, the appropriate unit should be established on a Department, plant, installation, functional, or other basis and will determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the Department, consistent with the Department's mission and organizational structure.

(b) A unit may not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor may a unit be determined to be appropriate if it includes—

(1) Except as provided under 5 U.S.C. 7135(a)(2), which is not waived for the purpose of this subpart, any management official or supervisor;

(2) A confidential employee;

(3) An employee engaged in personnel work in other than a purely clerical capacity;

(4) An employee engaged in administering the provisions of this subpart;

(5) Both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) Any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) Any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by the Department whose duties directly affect the internal security of the Department, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Pursuant to 6 U.S.C. 412(b)(2), a unit to which continued recognition was provided upon transfer to DHS may not include an employee whose primary duty has materially changed to consist of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(d) Any employee who is engaged in administering any provision of law or this subpart relating to labor-management relations may not be represented by a labor organization—

(1) Which represents other individuals to whom such provision applies; or

(2) Which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(e) Two or more units in the Department for which a labor organization is the exclusive representative may, upon petition by the Department or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the

larger unit to be appropriate. The Authority will certify the labor organization as the exclusive representative of the new larger unit.

§9701.515 Representation rights and duties.

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit must be given the opportunity to be represented at—

(i) Any formal discussion between Department representative(s) and bargaining unit employees, the purpose of which is to discuss and/or announce new or substantially changed personnel policies, practices, or working conditions. This right does not apply to meetings between Department representative(s) and bargaining unit employees for the purpose of discussing operational matters where any discussion of personnel policies, practices or working conditions—

(A) Constitutes a reiteration or application of existing personnel policies, practices, or working conditions;

(B) Is incidental or otherwise peripheral to the announced purpose of the meeting; or

(C) Does not result in an announcement of a change to, or a promise to change, an existing personnel policy(s), practice(s), or working condition(s);

(ii) Any discussion between one or more Department representatives and one or more bargaining unit employees concerning any grievance;

(iii) Any examination of a bargaining unit employee by a representative of the Department in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests such representation; or

(iv) Any discussion between a representative of the Department and a